

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

R'MON HOWARD ANDERSON

Petitioner,

v.

KATHY ALLISON, WARDEN

Respondent.

Case No. 11-CV-2330-LAB-(JMA)

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
[DOC. NO. 21]**

Presently before the court is a Motion for Appointment of Counsel that was filed by Petitioner R'mon Howard Anderson (hereinafter "Petitioner"). [Doc. No. 21.] For the reasons set forth below, the Court denies Petitioner's motion without prejudice.

The Sixth Amendment right to counsel does not extend to federal habeas corpus actions by state prisoners. McCleskey v. Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However, financially eligible habeas petitioners seeking relief pursuant to 28 U.S.C. § 2254 may obtain representation whenever the Court "determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B) (West Supp. 1995); Terrovona v. Kincheloe, 912 F.2d 1176, 1181 (9th Cir. 1990); Bashor v. Risley, 730

1 F.2d 1228, 1234 (9th Cir. 1984); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994).

2 The interests of justice require appointment of counsel when the Court conducts  
3 an evidentiary hearing on the Petition. Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d  
4 at 728; Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994); Rule 8©, 28 U.S.C. § 2254.  
5 The appointment of counsel is discretionary when no evidentiary hearing is necessary.  
6 Terrovona, 912 F.2d at 1177; Knaubert, 791 F.2d at 728; Abdullah, 18 F.3d at 573.

7 Here, there is no current indication that an evidentiary hearing is necessary.

8 In the Ninth Circuit, “[i]ndigent state prisoners applying for habeas relief are not  
9 entitled to appointed counsel unless the circumstances of a particular case indicate that  
10 appointed counsel is necessary to prevent due process violations.” Chaney, 801 F.2d  
11 at 1196; Knaubert, 791 F.2d at 728-29. A due process violation may occur in the  
12 absence of counsel if the issues involved are too complex for the petitioner. In addition,  
13 the appointment of counsel may be necessary if the petitioner has such limited  
14 education that he or she is incapable of presenting his or her claims. Hawkins v.  
15 Bennett, 423 F.2d 948, 950 (8th Cir. 1970).

16 Petitioner, who is incarcerated, contends counsel should be appointed on his  
17 behalf because: 1) he has limited access to the prison law library, which he estimates  
18 he “might make it to... maybe once a month” [Doc. No. 21., p. 3]; and 2) the prison  
19 where he is housed has “a strict policy on how much personal property an inmate is  
20 allowed to have in his living quarters,” so Petitioner is temporarily without access to his  
21 trial record [Id., p. 4]. He states that he is “in the process of obtaining access to the  
22 record again, but this is a timely process.” [Id.] These circumstances do not suggest  
23 that appointment of counsel is required to prevent a due process violation. Nor is there  
24 any indication that the issues are too complex or that Petitioner is incapable of  
25 presenting his claims. Thus, at this time, the Court finds that the interests of justice do  
26 not require the appointment of counsel.

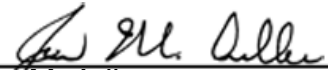
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1 Accordingly, Petitioner's Motion for Appointment of Counsel is **DENIED** without  
2 prejudice.

3 **IT IS SO ORDERED**

4 DATED: October 9, 2012

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6 Jan M. Adler  
7 U.S. Magistrate Judge  
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